IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. GEORGI G. GEVORGYAN, Defendant.	Case No. 14-03009-01-CR-S-BCW

GOVERNMENT'S SENTENCING MEMORANDUM

I. INTRODUCTION

Although a sentencing date has not yet been established, sentencing will take place before District Court Judge Brian C. Wimes. As more fully explained below, the Government recommends that the Court, in an exercise of its discretion, impose a non-guideline sentence of probation, as well as a fine of $3,000.00. The Government further recommends that the Court impose the standard and mandatory conditions of supervision adopted by this Court as well as the following special conditions of supervision: (1) provide the Probation Office with access to any requested financial information; (2) not incur new credit charges or open additional lines of credit without prior approval from the Probation Office; (3) not consume or possess alcoholic beverages or beer at any time, nor be present in any establishment where alcoholic beverages are the primary items for sale; and successfully participate in, and pay the costs associated with, any substance abuse testing program, to include urinalysis, sweat patch, or breathalyzer testing as directed by the Probation Office; (4) submit to a search of the defendant's person, property, house, residence, office, vehicle, computer, or other electronic communication or data storage devices by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion; (5) if not deported, report to the Probation Office within 72 hours and continue to report as directed for the remainder of the term of supervision. If deported, not reenter the United States illegally. If granted permission to legally enter the United States, or if the defendant illegally enters the United States, report to the Probation Office within 72 hours of entry, and continue to report as directed for the remainder of any unexpired term of supervision; (6) pay the full balance of all fines and court-ordered monetary obligations during the first two years of supervision; and, (7) perform 200 hours of community service during the first two years of supervision.[1]

II. SENTENCING RECOMMENDATIONS

A. No Unresolved Guideline Disputes

There are no unresolved disputes that affect the calculation of the advisory guideline sentence range. The parties agree that the total offense level is 13.[2] The parties agree that the defendant is in criminal history category I.[3] The advisory guideline sentencing range is imprisonment for 12 to 18 months, which is in Zone C of the Sentencing Table, where probation is not an authorized guideline sentence.[4] The recommended sentence of probation[5] is a non-guideline sentence that this Court can impose only after considering the sentencing factors set forth in 18 U.S.C. § 3553. A discussion of those factors follows.

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[1] Should the court decline to impose a sentence of probation, then the requested conditions should be imposed as part of the defendant's term of supervised release.

[2] PSR ¶¶ 19-28.

[3] PSR ¶ 33.

[4] PSR ¶ 51.

[5] In its plea agreement with the defendant, the United States agreed to join the defendant's request for a sentence of probation, even if probation was determined to be a non-guideline sentence. *See* Plea Agreement, Doc. No. 58, page 4, ¶ 7.

B. Sentencing Considerations Under 18 U.S.C. § 3553(a)

1. The History and Characteristics of the Defendant

The court is required to consider the defendant's history and characteristics prior to imposing sentence. 18 U.S.C. § 3553(a)(1). The defendant has zero criminal history points and is in criminal history category I. However, while on pre-trial supervision in this case he was arrested in the vicinity of his California residence on a charge of disorderly conduct in which alcohol intoxication was an underlying factor.[6] This history certainly justifies imposition of the requested conditions that the defendant refrain from the possession or use of alcohol and that he successfully participate in a substance abuse testing program.

The defendant was born in Armenia but has resided in the United States for more than 12 years. He has lived in multiple states since arriving in this country, to include Maryland, Indiana, New York, Missouri, and California. He is married and has a young child. He appears to have maintained consistent employment as an adult. All of these factors suggest that despite the incident of serious criminal behavior that brought the defendant before this court, there is every reason to believe the defendant is not only capable of avoiding future law violations, but also more likely than not to avoid future law violations, which supports the conclusion that he is a viable candidate for a probationary sentence.

2. The Need to Protect the Public from Future Crimes by the Defendant

The Court is required to consider whether a particular sentence is necessary to protect the public from further crimes of the defendant. 18 U.S.C. § 3553(a)(1)(C). In the Government's view, and based on the overall history and characteristics of this defendant, there is not a substantial likelihood that the defendant will reoffend. As a result, it is hard to argue that a prison sentence must be imposed in order to protect the public from future crimes by the defendant.

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[6] PSR ¶¶ 34 and 42.

Imposition of the substance abuse requirement mitigates the risk to the public that the defendant will commit future crimes. Additionally, the defendant's felony conviction, even without a sentence of imprisonment, provides adequate deterrence to this type of criminal conduct because the felony conviction alone should disable the defendant from being able in the future to operate a labor leasing company that employs aliens. In fact, as part of his plea agreement, the defendant will be barred from any future participation in government programs involving the employment of aliens (Plea Agreement, Doc. No. 58, ¶ 20). Hence, a prison sentence is not necessary to deter the defendant from engaging in this type of criminal conduct in the future, nor is a prison sentence necessary to protect the public from the defendant engaging in this type of criminal conduct in the future. Finally, as an alien, the defendant is subject to potential deportation. The deportation determination will not be made by the sentencing court, but will be made at another time in an appropriate immigration proceeding or forum. The specter of deportation, however, is another factor that should operate to deter this defendant from engaging in unlawful conduct in the future. And if the defendant is deported, then the public is definitively protected from future criminal conduct because the defendant will not even be in the United States.

3. The Nature and Circumstances of the Offense

The Court is required to consider the nature and circumstances of the offense of conviction, 18 U.S.C. § 3553(a)(1), as well as the type of sentence called for by the advisory guidelines, 18 U.S.C. §§ 3553(a)(3) and (a)(4). The Court also is required to consider the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense. 18 U.S.C. § 3553(a)(2)(A).

The currency structuring offense the defendant was convicted of might seem, at first glance, to be only a regulatory crime with little or no "dirty" criminal conduct. However, the defendant's offense level was increased because he admitted that the currency he structured was "dirty" money, i.e., the proceeds of criminal activity and intended to promote criminal activity. *See* Plea Agreement, Doc. No. 62, page 7, ¶ 10. Obviously then, this crime was not a "dry" structuring offense where the only thing going on was noncompliance with a regulatory banking requirement. Instead, this defendant knowingly engaged in financial manipulations with money derived from criminal activity. As a result, the Government believes the offense of conviction is a serious crime.

Similar to what happened with organized crime figures such as Al Capone, who was convicted of tax evasion rather than being convicted of the crimes that generated his ill-gotten gains, this defendant was convicted of currency structuring rather than being convicted of the crimes that generated his ill-gotten gains. Crimes committed for financial gain are typically punished with incarceration. The fact that the advisory guidelines call for a sentence of imprisonment reflects the reality that the offense of conviction is a serious crime. If the only sentencing factor to consider was the nature and circumstances of the offense, the seriousness of the crime would readily justify a sentence of imprisonment. However, the other sentencing factors present in this case suggest that incarceration is not necessary, and hence, the Government continues to recommend imposition of a non-guideline sentence of probation.

4. The Need to Afford Adequate Deterrence to Criminal Conduct

The Court is required to consider what type of sentence is needed to afford adequate deterrence to criminal conduct. 18 U.S.C. § 3553(a)(2)(B). A prison sentence is not the only way to deter criminal conduct. Here, the defendant has a felony conviction that will prevent him from employing aliens in the future or participating in government funded contracts. This provides the taxpayers with protection from future criminal acts that threaten the federal fisc. By reason of his felony conviction, the defendant has lost the right to possess firearms, will not be able to vote, and most likely has lost his ability to become a naturalized United States citizen. These are meaningful collateral consequences. Imposition of a prison sentence is not necessary to provide meaningful specific deterrence to this defendant or to send a sufficiently strong deterrence message to the public at large.

5. Balancing of All § 3553(a) Factors - Recommended Sentence

On balance, after weighing the relevant § 3553(a) factors, the Government recommends that the court impose a sentence of probation. As noted above, the Government further requests that the Court impose the following conditions as part of the defendant's probation: (1) provide the Probation Office with access to any requested financial information; (2) not incur new credit charges or open additional lines of credit without prior approval from the Probation Office; (3) not consume or possess alcoholic beverages or beer at any time, nor be present in any establishment where alcoholic beverages are the primary items for sale; and successfully participate in, and pay the costs associated with, any substance abuse testing program, to include urinalysis, sweat patch, or breathalyzer testing as directed by the Probation Office; (4) submit to a search of the defendant's person, property, house, residence, office, vehicle, computer, or other electronic communication or data storage devices by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion; (5) if not deported, report to the Probation Office within 72 hours and continue to report as directed for the remainder of the term of supervision. If deported, not reenter the United States illegally. If granted permission to legally enter the United States, or if the defendant illegally enters the United States, report to the Probation Office within 72 hours of entry, and continue to report as directed for the remainder of any unexpired term of supervision; (6) pay the full balance of all fines and court-ordered monetary obligations during the first two years of supervision; and, (7) perform 200 hours of community service during the first two years of supervision.

C. Recommended Sentence for Monetary Penalties

1. Restitution

As noted in ¶¶ 61 and 62 of the PSR, there are no factors that support imposition of a restitution order in this case.

2. Fine

In light of the defendant's limited financial resources, the Government does not recommend that the Court impose a substantial fine, however, since the defendant's crime was committed for financial gain, imposition of a fine is clearly an appropriate sentencing sanction. Accordingly, the Government recommends imposition of a fine in the amount of $3,000.00, which is at the lowest point of the applicable fine range. If the court is not inclined to impose a fine, then the Government requests imposition of 200 hours of community service to serve as a fine alternative.

3. Special Assessment

A $100.00 special assessment must be imposed, and the defendant's plea agreement requires him to pay this amount in full no later than the date of sentencing. *See* Plea Agreement, Doc. No. 3, page 5, ¶ 5. The defendant's failure to comply with this payment obligation no later than the date of sentencing would be a breach of the plea agreement. The United States reserves the right to be released from its obligations under the plea agreement in the event of such a breach. To prevent the defendant from being in breach of his plea agreement, the Government respectfully requests that the Court confirm at sentencing that the special assessment has been paid in full pursuant to the terms of the plea agreement.

III. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court impose a sentence in accordance with the recommendations made herein.

Respectfully submitted this 23rd day of June, 2015.

Tammy Dickinson
United States Attorney

s/ Phillip Eugene Porter

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 23, 2015, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

s/ Phillip Eugene Porter
Phillip Eugene Porter
Criminal Division Chief